

HOUSE No. 873

By Mrs. Harkins of Needham, petition of Lida E. Harkins and others relative to the penalties for certain crimes committed against the elderly and disabled persons. The Judiciary.

The Commonwealth of Massachusetts

PETITION OF:

Lida E. Harkins	Steven A. Tolman
Timothy J. Toomey, Jr.	Barbara A. L'Italien
Christine E. Canavan	Elizabeth A. Malia
Denis E. Guyer	David Paul Linsky
Carl M. Sciortino, Jr.	Michael E. Festa
Anne M. Gobi	David M. Torrisi
Andrea F. Nuciforo, Jr.	John W. Scibak
Kay Khan	William Smitty Pignatelli
Ruth B. Balser	James R. Miceli
Mary E. Grant	Marie J. Parente
John W. Scibak	Susan C. Fargo
Louis L. Kafka	William Lantigua
Karen E. Spilka	

In the Year Two Thousand and Five.

AN ACT RELATIVE TO CRIMES AGAINST ELDERS AND PERSONS WITH DISABILITIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. Chapter 111 of the General Laws is hereby
2 amended by striking all section 72K, as appearing in the 2000
3 Official Addition and inserting in place thereof the following
4 section:—
5 Section 72K. (a) As used in this section, the following words
6 shall, unless the context clearly requires otherwise, have the
7 following meanings:—

8 'Bodily injury', substantial impairment of the physical condi-
9 tion including, but not limited to, any burn, fracture of any bone,
10 subdural hematoma, injury to any internal organ, or any injury
11 which occurs as the result of repeated harm to any bodily function
12 or organ, including human skin.

13 'Serious bodily injury' bodily injury which results in a perma-
14 nent disfigurement, protracted loss or impairment of a bodily
15 function, limb or organ, or substantial risk of death.

16 'Sexual assault', a violation or attempt to commit a violation of
17 section 13B, section 13F, section 13H, section 22, section 22A,
18 section 24, or section 24B of chapter 265 or section 3 of
19 chapter 272.

20 (b) The attorney general may file a civil action against a person
21 who commits abuse, mistreatment or neglect of a patient or resi-
22 dent or who misappropriates patient or resident property, or
23 against a person who wantonly or recklessly permits or causes
24 another to commit abuse, mistreatment or neglect of a patient or
25 resident or misappropriate patient or resident property. The civil
26 penalty for such abuse, mistreatment, neglect or misappropriation
27 shall not exceed: \$5,000 if no bodily injury results; \$10,000 if
28 bodily injury results; \$20,000 if sexual assault or serious bodily
29 injury results; and \$50,000 if death results. Section 60B of
30 chapter 231 shall not apply to an action brought by the attorney
31 general pursuant to this section. Nothing in this section shall pre-
32 clude the filing of any action brought by the attorney general or a
33 private party pursuant to chapter 93A or any action by the depart-
34 ment pursuant to this chapter.

1 SECTION 2. Section 13H of chapter 265 is hereby amended
2 by adding the following paragraph:—

3 Whoever commits an indecent assault and battery on an elder
4 or person with disability, as defined in section 13K, shall be pun-
5 ished by imprisonment in the state prison for not more than 10
6 years, or by imprisonment in the house of correction for not more
7 than 2½ years, and whoever commits a second or subsequent such
8 offense shall be punished by imprisonment in the state prison for
9 not more than 20 years; provided, however, that a prosecution
10 commenced under this section shall not be placed on file or con-
11 tinued without a finding.

1 SECTION 3. Paragraph (a) of section 13K of said chapter 265,
2 as so appearing, is hereby amended by inserting after the word
3 ‘meanings:—,’ in line 3, the following definition:—
4 ‘Abuse’ physical contact which either harms or creates a sub-
5 stantial likelihood of harm.

1 SECTION 4. Paragraph (a) of section 13K of chapter 265, as
2 so appearing, is hereby further amended by amending the defini-
3 tion of ‘Caretaker’ as so appearing by amending the phrase ‘phys-
4 ical care’ as it so appears in the first sentence of said definition by
5 deleting the word ‘physical’ and by further amending said phrase
6 ‘physical care’ as it so appears in sub-paragraphs (i), (iii) and (iv)
7 of said definition by deleting the word ‘physical’.

1 SECTION 5. Said paragraph (a) of section 13K of said
2 chapter 265, as so appearing, is hereby further amended by
3 inserting after the definition of ‘Caretaker’ the following 2 defini-
4 tions:—
5 ‘Mistreatment’, the use of medications or treatments, isolation,
6 or physical or chemical restraints which harm or creates a substan-
7 tial likelihood of harm.
8 ‘Neglect’, the failure to provide treatment or services necessary
9 to maintain the health and safety and which either harms or cre-
10 ates a substantial likelihood of harm.

1 SECTION 6. Said paragraph (a) of section 13K of said
2 chapter 265, as so appearing, is hereby further amended by adding
3 the definition of “person with a disability” as so appearing by
4 deleting said definition and placing in its stead the following:—
5 ‘Person with disability,’ a person with a permanent or long-
6 term physical or mental impairment that prevents or restricts the
7 individual's ability to provide for his or her own care or protec-
8 tion.

1 SECTION 7. Said section 13K of said chapter 265, as so
2 appearing, is hereby further amended by inserting after the defini-
3 tion of ‘Serious bodily injury’ and before paragraph (b) the
4 following language:—

5 (b) Whoever commits an assault and battery upon an elder or
6 person with a disability shall be punished by imprisonment in the
7 state prison for not more than three years or by imprisonment in a
8 house of correction for not more than two and one-half years, or
9 by a fine of not more than \$1,000, or both such fine and imprison-
10 ment.

11 Said section 13 K of said chapter 265, as so appearing, is
12 hereby further amended as follows:

13 By renumbering paragraph (b) as it now appears as paragraph
14 (c) and renumbering paragraph (c) as it now appears as paragraph
15 (d) and by inserting the following language after the renumbered
16 paragraph (d):—

17 (e) Whoever, being a caretaker of an elder or person with a dis-
18 ability, wantonly or recklessly commits or permits another to
19 commit abuse, neglect or mistreatment upon such elder or person
20 with a disability, shall be punished by imprisonment in the state
21 prison for not more than three years, or imprisonment in the house
22 of correction for not more than 2½ years, or by a fine of not more
23 than \$5,000, or by both such fine and imprisonment.

24 Said section 13K of chapter 265, as so appearing, is hereby fur-
25 ther amended as follows:

26 By renumbering paragraph (d) as it now appears as
27 paragraph (f) and renumbering paragraph (f) as it now appears as
28 paragraph (h).

1 SECTION 8. Said chapter 265 is hereby further amended by
2 striking out section 38.